

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
C.A. No. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC. )  
D/B/A TRUCK SERVICE, )  
Plaintiff )  
vs. )  
CATERPILLAR, INC., )  
Defendant )

AUDIOVISUAL DEPOSITION OF JOSEPH M. HOWARD, JR., a witness called on behalf of the Defendant, pursuant to Massachusetts Rules of Civil Procedure, before Susan E. Wilson, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Law Offices of Campbell, Campbell, Edwards & Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 3, 2005, commencing at 9:43 a.m.

C.J. REPORTING  
A5 Colonial Drive, No. 7  
Andover, Massachusetts 01810  
978.409.9090  
www.cjreporting.com

# INDEX

DEPONENT Joseph M. Howard, Jr.

## PAGE

DIRECT EXAMINATION BY  
MR. GRUNERT 9

CROSS-EXAMINATION BY  
MS. REIMER 283

## APPEARANCES:

NANCY M. REIMER, ESQUIRE  
CHRISTIAN G. SAMITO, ESQUIRE  
Donovan Halem, LLP  
Two Seaport Lane  
Boston, MA 02210  
617-406-4500  
On Behalf of the Plaintiff.

JOHN GRUNERT, ESQUIRE  
Campbell, Campbell, Edwards & Conroy  
One Constitution Plaza  
Boston, MA 02129  
617-241-3000  
On Behalf of the Defendant.

Also Present:

William Barton, Videographer

## EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Sterling Specification Proposal 3/23/99	103
2	Sterling Summary Quotation	124
3	On-Highway Vehicle Engine Extended Service Coverage	140
4	Letter Dated March 24, 2005	140
5	Caterpillar Limited Warranty	144
6	Caterpillar Limited Warranty	144
7	Flywheel Housing Replaced	148
8	Sterling Truck Number Assignment	163
9	Documents Pertaining to Truck 6000	188
10	Documents Pertaining to Truck 6100	188
11	Documents Pertaining to Truck 6200	188
12	Documents Pertaining to Truck 6300	188

**EXHIBIT**

tabbles

65

1 I'm a very faithful person, and I really  
2 had to take all of this under  
3 consideration.  
4 **Q.** What research did you do the next day in  
5 order to learn that Hartford was not  
6 within Southworth Milton's district?  
7 **A.** I believe I called Harry Calderbank.  
8 **Q.** What did you say to him and what did he  
9 say to you?  
10 **A.** I was -- at that point, I think I had  
11 called Harry on concessions of the  
12 multiple purchase of Caterpillar engines  
13 versus the M11 Cummins. And Harry  
14 informed me that -- and I'm not even  
15 sure if this was before or after the  
16 conversation with Kevin Holmes, but he  
17 informed me that Hartford wasn't in his  
18 district, that I would have to deal with  
19 New Haven.  
20 **Q.** Did he tell you the company that you  
21 would have to deal with if you bought  
22 these trucks in Connecticut?  
23 **A.** Well, I know the Caterpillar dealer in  
24 New Haven. I can't even think of the

66

1 name.  
2 **Q.** H.O. Penn?  
3 **A.** Yes. That is what it was.  
4 **Q.** Did Mr. Calderbank tell you that if you  
5 purchased these trucks from the  
6 Connecticut dealership that you would  
7 have to deal with H.O. Penn in terms of  
8 servicing for the engines?  
9 **A.** Yes. Or warranty for the engines or  
10 concessions for the engines. Anything  
11 about the engine, he couldn't help me.  
12 He could fix them. He could fix  
13 anybody's Caterpillar, but he couldn't  
14 offer any assistance on the financial  
15 arrangement.  
16 **Q.** You mentioned having talked with Mr.  
17 Calderbank about concessions on  
18 purchasing multiple engines relative to  
19 the Cummins engine. Tell me about that  
20 conversation. What did you say and what  
21 did he say?  
22 **A.** I really don't recall the exact  
23 conversation, but it was about  
24 performance, about weight, about the

67

1 **warranty, the cost of warranty, the**  
2 **discounting and, of course, who would**  
3 **stand behind their warranty the best.**  
4 **Q.** In the conversation with Mr. Calderbank  
5 comparing the Cummins M11 and the C-12,  
6 what did he tell you about relative  
7 performance?  
8 **A.** He showed me comparison charts between  
9 the two engines, economy charts. The --  
10 **Q.** I'm sorry. I interrupted you. Finish  
11 your answer.  
12 **A.** I was primarily done. I wanted it to be  
13 Caterpillar.  
14 **Q.** Did you keep those charts that he showed  
15 you?  
16 **A.** No. No. Not that long.  
17 **Q.** What do you remember them showing that  
18 was of interest to you?  
19 **A.** Torque curve, actual power, gross  
20 horsepower, grade ability versus  
21 economy. One of the big things that he  
22 was selling was the cleanliness of the  
23 Caterpillar versus the Cummins. I  
24 believe he said the Cummins is the --

68

1 **M11 is the dirtiest engine on the**  
2 **market.**  
3 **Q.** Does that mean it has high emissions?  
4 **A.** I think, internally, soot. Soot in the  
5 oil, if you do an oil analysis.  
6 **Q.** Anything else that you remember him  
7 telling you about relative performance  
8 of the Cummins engine and the C-12?  
9 **A.** He knew I wanted to be talked out of it.  
10 So it really wasn't a heated  
11 conversation of any kind. I wanted to  
12 be talked out of it. I wanted him to  
13 match what they were trying to sell me.  
14 **Q.** Have you given me your best memory of  
15 the information that Mr. Cummins gave  
16 you in the conversation that you had  
17 with him comparing the M11 Cummins  
18 engine to the C-12?  
19 MS. REIMER: Objection  
20 as to form.  
21 **A.** I didn't quite understand it.  
22 MS. REIMER: You got the  
23 wrong name in there.  
24 **Q.** Have you given me your best and most

69

1 complete memory of your conversation you  
2 had with Mr. Calderbank comparing the  
3 Cummins engine and the C-12 engine?  
4 **A. Yes.**  
5 **Q.** He also talked to you about relative  
6 weights of the two engines?  
7 **A. Yes.**  
8 **Q.** C-12 was lighter?  
9 **A. No.**  
10 **Q.** C-12 was heavier?  
11 **A. He said they were the same. There was**  
12 **about 60 pounds difference.**  
13 **Q.** What did he tell you about relative  
14 warranties?  
15 **A. They were the same.**  
16 **Q.** Did he describe the warranties other  
17 than just telling you that they were the  
18 same?  
19 **A. I believe he called it a serious**  
20 **nucleus, and he gave us literature**  
21 **showing everything that it covered.**  
22 **Q.** Was so-called serious nucleus coverage  
23 something that you had on other  
24 Caterpillar engines that you already

70

1 owned?  
2 **A. Everything, yes.**  
3 **Q.** Technically speaking, it was an extended  
4 service contract that you purchased,  
5 correct?  
6 **A. Yes.**  
7 **Q.** When I say that you purchased, either  
8 you purchased it by paying money or you  
9 got it as part of the overall  
10 transaction whereby you purchased the  
11 truck with the Caterpillar engine in it?  
12 **A. Yes. Had a figure -- had a cost figure**  
13 **on it. If you didn't want it and wanted**  
14 **the money, I don't think they would give**  
15 **it to you. No. It did have a cost**  
16 **figure. It had a value.**  
17 **Q.** Let me just show you a document. What I  
18 have got is a package of documents  
19 contained with a letter from your  
20 attorneys. I'm just going to hand it to  
21 you in that form. But I will ask you to  
22 look at the third page of the document,  
23 third page, including the first page,  
24 which is your attorney's letter, and ask

71

1 you if that is the serious nucleus  
2 coverage that you understood Mr.  
3 Calderbank to be talking about. It's a  
4 two-sided document.  
5 **A. All I really remember is I did see a**  
6 **list of numbers on a page, and this**  
7 **would have been explained to me, and**  
8 **then Andy would have -- he is my**  
9 **technical guy -- he would have taken it**  
10 **from there.**  
11 **Q.** Andy Lind?  
12 **A. Yes.**  
13 **Q.** The document that I have shown you that  
14 says on the front of it On Highway  
15 Vehicle Engine Extended Service  
16 Coverage, is that a form of document  
17 that Mr. Calderbank showed you in  
18 connection with these conversations he  
19 was having with you concerning --  
20 **A. He never showed me a document.**  
21 **Q.** You had seen a document of this type  
22 before in connection with your other  
23 Caterpillar engines, correct?  
24 **A. I don't remember ever seeing it. I**

72

1 **possibly could have, but I don't recall**  
2 **it.**  
3 **Q.** In the conversation that you had with  
4 Mr. Calderbank concerning the warranty,  
5 relative warranties as to the Cummins  
6 engine or the C-12 engine, although he  
7 didn't show you the document, did he  
8 tell you what the coverage would be?  
9 **A. Yes, he did.**  
10 **Q.** What did he say?  
11 **A. He said it would be a 500,000 mile**  
12 **extended warranty.**  
13 **Q.** Did he tell you anything else?  
14 **A. He told me what it would cover and what**  
15 **it wouldn't cover.**  
16 **Q.** What did he tell you on that subject?  
17 **A. All the heavy parts after a certain**  
18 **time. I don't believe it would cover --**  
19 **on the extended it wouldn't cover a**  
20 **turbocharger or injector or an ECM or**  
21 **something like that, but as far as the**  
22 **internal combustion parts, pistons,**  
23 **valves, crankshaft, timing gears,**  
24 **totally everything.**

<p style="text-align: right;">109</p> <p>1 specifications for these trucks?</p> <p>2 <b>A. I had run across them not too long ago.</b></p> <p>3 <b>I don't believe that we have -- we still</b></p> <p>4 <b>have them.</b></p> <p>5 <b>Q. When did you last see them?</b></p> <p>6 <b>A. It could have been a couple of years</b></p> <p>7 <b>ago. I really don't recall.</b></p> <p>8 <b>Q. Where were they when you saw them?</b></p> <p>9 <b>A. I don't know if they were in my</b></p> <p>10 <b>briefcase. I continually throw things</b></p> <p>11 <b>away. Old things get thrown away.</b></p> <p>12 <b>Whether it's my briefcase or my desk or</b></p> <p>13 <b>what have you, things I don't have to</b></p> <p>14 <b>keep, I don't keep.</b></p> <p>15 <b>Q. During the process whereby Mr. Medbery</b></p> <p>16 <b>sent you these line sheets and corrected</b></p> <p>17 <b>line sheets and you then spoke with him</b></p> <p>18 <b>about changes to them, during the period</b></p> <p>19 <b>that that process was going on, did you</b></p> <p>20 <b>have any communications with Mr.</b></p> <p>21 <b>Calderbank or anyone else employed by</b></p> <p>22 <b>Southworth-Milton or Caterpillar</b></p> <p>23 <b>concerning the engines that were to be</b></p> <p>24 <b>in these trucks?</b></p>	<p style="text-align: right;">111</p> <p>1 these trucks?</p> <p>2 <b>A. Retail.</b></p> <p>3 <b>Q. What do you mean by that?</b></p> <p>4 <b>A. A truck with, they call it, a big bore</b></p> <p>5 <b>engine has a higher resale than a</b></p> <p>6 <b>smaller engine.</b></p> <p>7 <b>Q. Other than resale value, was there</b></p> <p>8 <b>anything about the performance</b></p> <p>9 <b>characteristics or the quality or the</b></p> <p>10 <b>accessories or the equipment on a 3406E</b></p> <p>11 <b>that caused you to be interested in that</b></p> <p>12 <b>as a possible alternative to a C-12 for</b></p> <p>13 <b>these trucks?</b></p> <p>14 <b>A. No.</b></p> <p>15 <b>Q. Was it you who raised the subject with</b></p> <p>16 <b>Mr. Calderbank about possibly having the</b></p> <p>17 <b>trucks equipped with a 3406E, or did Mr.</b></p> <p>18 <b>Calderbank raise that possibility?</b></p> <p>19 <b>A. I did.</b></p> <p>20 <b>Q. Had Mr. Medbery, or anyone from</b></p> <p>21 <b>Minuteman, suggested the possibility of</b></p> <p>22 <b>a 3406E?</b></p> <p>23 <b>A. No.</b></p> <p>24 <b>Q. So you raised, during this period of</b></p>
<p style="text-align: right;">110</p> <p>1 <b>A. Yes.</b></p> <p>2 <b>Q. Who did you have those conversations or</b></p> <p>3 <b>communications with?</b></p> <p>4 <b>A. Primarily Harry Calderbank.</b></p> <p>5 <b>Q. Anybody other than Harry Calderbank?</b></p> <p>6 <b>A. I'm sure I had spoken to Al Cardoza, but</b></p> <p>7 <b>I don't really recall a specific</b></p> <p>8 <b>conversation.</b></p> <p>9 <b>Q. During the period where you are going</b></p> <p>10 <b>back and forth with Mr. Medbery about</b></p> <p>11 <b>these line sheets, what were the</b></p> <p>12 <b>communications you had with Mr.</b></p> <p>13 <b>Calderbank concerning the engines that</b></p> <p>14 <b>you wanted to be in these trucks that</b></p> <p>15 <b>you were discussing?</b></p> <p>16 <b>A. We discussed other Caterpillar engines</b></p> <p>17 <b>also and the weight factor between at</b></p> <p>18 <b>that time a 3406E. It was 600 pounds</b></p> <p>19 <b>and it was just too heavy, so we</b></p> <p>20 <b>reverted back to the C-12, and it had</b></p> <p>21 <b>been working out, so we decided on that,</b></p> <p>22 <b>and then he told me about the</b></p> <p>23 <b>discounting.</b></p> <p>24 <b>Q. Why were you considering a 3406E for</b></p>	<p style="text-align: right;">112</p> <p>1 time, with Mr. Calderbank about a 3406E,</p> <p>2 and you and he discussed the weight</p> <p>3 penalty that that would entail?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q. The weight penalty was more than you</b></p> <p>6 <b>wanted to pay basically, correct?</b></p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q. You also said that during this period of</b></p> <p>9 <b>time you discussed discounting with Mr.</b></p> <p>10 <b>Calderbank. What discussion was had on</b></p> <p>11 <b>the subject of discounting?</b></p> <p>12 <b>A. Basically, how bad do you want my</b></p> <p>13 <b>business?</b></p> <p>14 <b>Q. What did you say to him and what did he</b></p> <p>15 <b>say to you?</b></p> <p>16 <b>A. I believe he had given us or offered us</b></p> <p>17 <b>an extra \$500 discount off of each</b></p> <p>18 <b>engine over and above what the dealer</b></p> <p>19 <b>could get from Sterling itself on an OEM</b></p> <p>20 <b>basis and free of charge extended</b></p> <p>21 <b>500,000 mile warranty.</b></p> <p>22 <b>Q. So is that what you and he discussed in</b></p> <p>23 <b>terms of discounting?</b></p> <p>24 <b>A. What we had to do was match the M11</b></p>



229

1 them that lists out all of the trucks  
2 that they are going to be -- all the  
3 trucks that might be dispatched for work  
4 on a particular day?  
5 **A. Yes.**  
6 **Q.** And do those forms that the dispatchers  
7 use identify Trans-Spec trucks that are  
8 out of service on that day?  
9 **A. What a coincidence. Yes.**  
10 **Q.** So if I wanted to know specific days  
11 when particular trucks were out of  
12 service, I could learn that by looking  
13 at those dispatcher forms, if they are  
14 still in existence, correct?  
15 **A. Yes.**  
16 **Q.** And has Trans-Spec kept those dispatcher  
17 forms for the last several years?  
18 **A. Yes.**  
19 **Q.** Where are they located?  
20 **A. 22 Eskow Road.**  
21 **Q.** Are they located in the storage trailer  
22 there, or are they located somewhere  
23 else?  
24 **A. No. They are on the dispatch system.**

230

1 **Q.** So they are actually electronically  
2 stored?  
3 **A. Yes.**  
4 **Q.** How far back do those records exist?  
5 **A. 1996.**  
6 **Q.** So for each day between the day in early  
7 2000 when these trucks went into service  
8 up until today, there would be a  
9 dispatcher form that would tell us which  
10 of the trucks was in service or out of  
11 service on that day, correct?  
12 **A. Yes. That's correct.**  
13 **Q.** What would be involved in printing out  
14 those forms?  
15 **A. Not much.**  
16 **Q.** It would be an easy thing to do?  
17 **A. Yes.**  
18 **Q.** As you sit here today, you probably  
19 can't tell me the specific days when  
20 each of these 22 Sterling trucks were  
21 out of service, can you?  
22 **A. No. I can't.**  
23 **Q.** Would the best way of getting that  
24 information be by looking at those

231

1 dispatcher forms?  
2 **A. Or just have them print it out.**  
3 **Q.** Well, whether you are looking at them on  
4 the screen or getting them printed out,  
5 that would be the easiest and most  
6 effective way to know exactly when those  
7 trucks were out of service, correct?  
8 **A. Absolutely.**  
9 **Q.** Those forms wouldn't tell you why they  
10 were out of service, but they would tell  
11 you whether they were out of service or  
12 not, right?  
13 **A. Yes.**  
14 **Q.** I understand that in June of 2004, you  
15 attended a meeting at Southworth  
16 Milton's place of business in Milford,  
17 Massachusetts that was attended by  
18 yourself and maybe some other people  
19 from Trans-Spec and some people from  
20 Caterpillar and some people from  
21 Southworth. Do you remember that  
22 meeting?  
23 **A. Yes, I do.**  
24 **Q.** Was that the first meeting that you had

232

1 related to these trucks and engines with  
2 people who were actually Caterpillar  
3 employees as distinct from  
4 Southworth-Milton employees?  
5 **MS. REIMER: Objection.**  
6 **A. Yes.**  
7 **Q.** Before that meeting, had you had any  
8 conversation with people who were  
9 actually Caterpillar employees as  
10 distinct from Southworth-Milton  
11 employees about these trucks or engines?  
12 **A. I really never knew the difference.**  
13 **Q.** Before that meeting, you had had  
14 conversations about these trucks and  
15 engines with Mr. Calderbank and Mr.  
16 Cardoza, right?  
17 **A. Amongst others, yes.**  
18 **Q.** Who are the others?  
19 **A. There was a fellow in a wheelchair.**  
20 **Q.** What was that fellow's name?  
21 **A. I really don't recall.**  
22 **Q.** Where did you have a conversation with  
23 him?  
24 **A. I seen him a few different -- once in**

233

1 **Milton. Once on my property. There was**  
2 **a fellow named Gary Blood.**  
3 Q. You mentioned him earlier?  
4 A. **Right.**  
5 Q. Anybody else?  
6 A. **There was -- there were plenty of**  
7 **others, but one time here and one time**  
8 **there and...**  
9 Q. Can you name any of them?  
10 A. **I really -- I'm not the greatest on**  
11 **names.**  
12 Q. Now, returning to this meeting in June  
13 2005, you attended it and who else from  
14 Trans-Spec attended it?  
15 A. **Robert Barton.**  
16 Q. Anybody else?  
17 A. **From Trans-Spec, no.**  
18 Q. Who else was present at that meeting?  
19 A. **Troy. I really can't recall his last**  
20 **name. He was from Caterpillar.**  
21 Q. Guidotti, or something like that?  
22 A. **Something like that.**  
23 Q. I am not sure I am pronouncing it right.  
24 But his first name was Troy and he was

234

1 from Caterpillar?  
2 A. **Yes.**  
3 Q. Did he give you a card?  
4 A. **He did.**  
5 Q. It said Caterpillar on it?  
6 A. **Oh, yeah.**  
7 Q. Who else was at the meeting?  
8 A. **Al Cardoza from Southworth. There was**  
9 **somebody else there from Southworth.**  
10 **There was Mike Bumpus.**  
11 Q. Who is Mike Bumpus?  
12 A. **He is the district rep for Sterling.**  
13 Q. Who else was there?  
14 A. **I believe he is with Sterling, yes.**  
15 **Then there was another rep from**  
16 **Sterling.**  
17 Q. You don't remember his name?  
18 A. **I will think of his name. Something**  
19 **like Bob White or Bob.**  
20 Q. Bob, someone from Sterling?  
21 A. **Yes. I have been dealing with him**  
22 **forever because he was with Freightliner**  
23 **prior to being with Sterling.**  
24 Q. Other than yourself and Mr. Barton and

235

1 Mr. Guidotti and Al Cardoza and someone  
2 else who you can't --  
3 A. **Bill Wicher.**  
4 Q. -- you can't recall from SMI, Mr. Bumpus  
5 and Bob from Sterling and also Mr.  
6 Wicher?  
7 A. **Yes.**  
8 Q. Bill Wicher?  
9 A. **Bill Wicher from Minuteman Trucks.**  
10 Q. Anybody else there?  
11 A. **I believe that was it.**  
12 Q. Did anyone participate by telephone?  
13 A. **No.**  
14 Q. Do you remember what time of the day the  
15 meeting was?  
16 A. **I really don't. I'm picturing**  
17 **mid-morning.**  
18 Q. Do you remember how long the meeting  
19 lasted?  
20 A. **An hour, hour and a half.**  
21 Q. Did you make any notes during the  
22 meeting?  
23 A. **No. I have -- Bob did.**  
24 Q. Mr. Barton made notes?

236

1 A. **Yes.**  
2 Q. Are those notes still in existence?  
3 A. **I believe, yes.**  
4 Q. Are they handwritten notes?  
5 A. **With Bob I'm sure he put them in type.**  
6 **He is pretty good.**  
7 Q. Are these notes that were made at the  
8 meeting itself?  
9 A. **Yes.**  
10 Q. So these aren't documents that were  
11 prepared in anticipation of the meeting?  
12 A. **No.**  
13 Q. Did you take to that meeting any  
14 documents to use at the meeting?  
15 A. **Yes.**  
16 Q. Were those documents that have now been  
17 marked Exhibits 9 through 30?  
18 A. **I believe so.**  
19 Q. They were in some sort of notebook at  
20 that time, right?  
21 A. **Yes.**  
22 Q. Did you take any additional documents to  
23 that meeting?  
24 A. **I don't believe I did. I think that's**

245

247

the proposal of Sterling to help us market the trucks we have. They have access to, you know, probably a thousand truck lots owned by Freightliner which are -- they have a name for them.

Select. Select Truck Centers are owned by Freightliner -- and maybe spread them out across the country, two here, two there and what have you, and sell us Caterpillar engines at a really good price and sell us a Sterling truck at a really good price. And we needed them by a certain time so that we could meet our contracts the following winter.

Q. What did Mr. Bumpus and Mr. Blake respond to all of that?

A. They couldn't get engines.

Q. What do you mean they couldn't get engines?

A. They were willing. They couldn't get engines. Caterpillar wouldn't bend one inch. They told us we could have Caterpillar engines by like February or something like that. They were all

246

booked up.

Q. What about trucks with different kinds of engines other than Caterpillar engines, could they get those?

A. Could they have gotten those?

Q. Did you discuss with them getting those?

A. No. Not really.

Q. Why not?

A. It wouldn't help my problem.

Q. What else was discussed at that meeting?

A. You know, we had two meetings, and I'm confusing some things possibly being said at the second meeting. They are real close together. The same people were there except I don't think Bumpus and Ed Blake were at the second one, but Steve Schoening was.

Q. I'm trying to --

A. What I'm getting at is the events, there's a little bit in each meeting and I really -- I possibly could be getting some confused between the two, and I'm not sure if I am or not. They were almost combined meetings, so my answers

would be correct.

Q. The first meeting was there any discussion specifically of the terms of the extended service contract that you had obtained way back when Trans-Spec took delivery of these trucks?

A. No.

Q. Was there any discussion of what that covered and what it didn't cover?

A. No.

Q. So that you just didn't talk about that document at the meeting, correct?

A. Correct.

Q. You didn't talk about the Caterpillar limited warranties with respect to these engines, correct?

A. It wasn't that kind of a meeting.

Q. Then there was a second meeting, and that occurred in August 2004?

A. That sounds good.

Q. Is it your memory that it was in August?

A. My memory is it was either July or August.

Q. That meeting also was at

248

Southworth-Milton in Milford?

A. I believe it was.

Q. Was Mr. Guidotti there?

A. We were in a smaller office. I still believe it was there, though. Yes, he was there.

Q. Mr. Schoening was there?

A. Yes.

Q. That is S-C-H-O-E-N-I-N-G.

Did Mr. Schoening give you a card?

A. Yes.

Q. Had you met Mr. Schoening before?

A. I'm not sure.

Q. Had you spoken with Mr. Schoening before?

A. No. I don't believe so.

Q. Al Cardoza was there, right?

A. Yes.

Q. And you and Mr. Barton?

A. Yes.

Q. Other than Cardoza, was anyone else from Southworth-Milton there?

A. I don't believe so.

237

1 what we had.  
2 Q. Did anyone at that meeting supply you or  
3 Mr. Barton with any documents during the  
4 course of the meeting?  
5 A. When a question was asked, the fellow  
6 that had all the information was Al  
7 Cardoza. He had every history from  
8 every truck I had ever owned right back  
9 from day one.  
10 Q. He had a large volume of documents with  
11 him?  
12 A. I think he -- I don't know if he had it  
13 on his Palm Pilot. I really don't know.  
14 But he opened up a book, and any  
15 question that was asked he read off on  
16 this date and this date, this was done,  
17 and so on.  
18 Q. Did Mr. Cardoza supply you or Mr. Barton  
19 with any of the documents that he was  
20 looking at?  
21 A. No.  
22 Q. When you left that meeting with Mr.  
23 Barton, did you take any documents away  
24 with you?

238

1 A. No. Just our own book.  
2 Q. Give me your best memory of what  
3 happened at that meeting and who said  
4 what to whom?  
5 A. Ed Blake is the other guy from Sterling.  
6 I always do that.  
7 Q. His first name wasn't Bob, it was Ed?  
8 A. No, it was Ed. Close, though. It only  
9 has a couple of letters in it.  
10 Q. Tell me what happened in the meeting and  
11 who said what to whom?  
12 A. Everyone was pretty cordial. They  
13 wanted to take care of our problems, and  
14 I believe they did. And Troy said, We  
15 are going to start fixing the trucks or  
16 we are going to see about fixing the  
17 trucks. That's what he said.  
18 At the time, we wanted  
19 to get new trucks, so we were talking  
20 about can Caterpillar help us out. If  
21 we traded these trucks, if we sold these  
22 trucks outright, could we get a discount  
23 on new engines? Sterling was there.  
24 Could we get -- what we were looking for

239

1 was to make this go away, and we just  
2 didn't want to hurt anybody. We just  
3 wanted our trucks fixed, be reimbursed  
4 for what we had spent and basically get  
5 a wholesale price on a truck and an  
6 engine, or we discussed it anyway.  
7 We got out of it they  
8 are going to fix the trucks. And Troy  
9 basically confirmed what we were being  
10 told by the Milton employees that,  
11 historically, Caterpillar will make this  
12 up to us. And the term that Troy used,  
13 for the first time I heard at that  
14 meeting, was that Caterpillar will make  
15 you whole.  
16 So we left feeling very  
17 confident that we felt great. This  
18 thing is going to go away, and we are  
19 going to be back where we once were with  
20 Caterpillar by our side and we would be  
21 happy again.  
22 Q. Did you ask Mr. Guidotti what he meant  
23 when he said Caterpillar will make you  
24 whole?

240

1 A. No.  
2 Q. Did he explain what he meant by that?  
3 A. Financially whole is what we were  
4 looking for, and we believed and so did  
5 the Sterling employees believed that's  
6 what he meant, also.  
7 Q. Tell me exactly what Mr. Guidotti said  
8 in the part of this conversation where  
9 he used that phrase.  
10 A. There were a lot of things said. That  
11 is the one thing that stuck in my mind,  
12 of course, because that was the most  
13 important statement made in the whole  
14 meeting.  
15 Q. Other than those words, do you remember  
16 the context, the sentence, the  
17 discussion that those words were stated  
18 in?  
19 A. That meeting wasn't as important as the  
20 next meeting.  
21 Q. I'm not interested in talking right now  
22 about the next meeting. I'm trying to  
23 understand what was actually said at the  
24 June meeting. You reported some words.



249

Q. No one from Sterling was there?  
A. **No.**  
Q. What about Bill Wicher, was he there?  
A. **I believe he was there.**  
Q. Was anyone else at that meeting?  
A. **I don't think so.**  
Q. Did you and Mr. Barton bring any documents to that meeting?  
A. **I believe we did.**  
Q. Were they the same documents that you had taken to the earlier meeting?  
A. **Yes. And some things added to it probably.**  
Q. What had been added to it?  
A. **I really don't know. Some more of the same.**  
Q. Did you take any notes at that meeting?  
A. **No.**  
Q. Did Mr. Barton take any notes at that meeting?  
A. **I'm not sure. He usual does, though.**  
Q. Have you seen any of these notes since the meeting?  
A. **No. I have spoken to Bob Barton a few**

250

**times. Not recently about the meeting, no.**  
Q. Mr. Barton still works for Trans-Spec?  
A. **Yes.**  
Q. Did anyone supply you with any documents at that meeting?  
A. **I don't believe so.**  
Q. How long did that second meeting last?  
A. **45 minutes maybe, half hour, hour.**  
Q. After you all got together in the meeting room, who was the first to speak other than simply introductions?  
A. **Steve Schoening.**  
Q. What did Mr. Schoening say?  
A. **He said, "Hello, I'm Steve Schoening." He said, "I'm just here to tell you," with his hands stuck out, "that this is absolutely not your fault and Caterpillar will make you whole."**  
Q. Then what did he say?  
A. **When the meeting was over, everybody talked a little bit about the problems, and he just wanted to get the trucks fixed at a faster rate. And he said,**

251

1 **"We have got to get you rental trucks."**  
2 **And I said, "I can't. I don't think I**  
3 **can get rental trucks."**  
4 Q. He responded what?  
5 A. **He didn't.**  
6 Q. What was the discussion on the subject  
7 of getting your trucks or Trans-Spec's  
8 trucks repaired more quickly? What was  
9 that discussion?  
10 A. **He looked at Al to utilize the shop, you**  
11 **know, fixing a couple of trucks at once**  
12 **possibly in the shop. We had ten or**  
13 **eleven down at that meeting. And they**  
14 **were fixing them, but they would take**  
15 **two weeks to fix them or sometimes a**  
16 **month when they couldn't get a part.**  
17 The truck with the bad  
18 engine, that truck was denied warranty  
19 over a year prior to us putting an  
20 engine in and buying. We paid \$20,000  
21 for an engine and we put it in.  
22 And then that flywheel  
23 housing failed and Southworth said, Gee,  
24 we don't warranty -- Caterpillar doesn't

252

1 warranty that engine, so you have to  
2 give us back the old engine and take  
3 your new engine out and we'll fix your  
4 old engine.  
5 So here I am I still  
6 have a new engine. It is actually  
7 \$22,000 sitting on a stand with nothing.  
8 It was just thrown-away money because we  
9 were denied warranty.  
10 Q. You talked with Mr. Schoening about  
11 getting work done on the trucks more  
12 quickly. Mr. Schoening stuck out his  
13 hand and said that they would make you  
14 whole?  
15 A. **He quoted what Troy had said, and Troy**  
16 **said the same thing at the last meeting.**  
17 **"This is not your fault."**  
18 Q. What else did Mr. Schoening say at the  
19 meeting in August?  
20 A. **The only important things he said was**  
21 **that and about getting us rental trucks.**  
22 **It was such a positive meeting. We**  
23 **didn't say much. Everybody else said it**  
24 **for us and told us exactly what we**